UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WISCONSIN

ALISON J. NOHARA, individually,
and as representative of a Class of
Participants and Beneficiaries, on Behalf
of the Prevea Clinic, Inc. 401(k) and
Retirement Plan,

        Plaintiff,

        v.   Case No. 20-C-1079

PREVEA CLINIC, Inc., et al.,

        Defendants.

ORDER STAYING CASE

Plaintiff Alison J. Nohara, a participant in the Prevea Clinic, Inc. 401(k) Retirement Plan (the Plan), brings this case as a proposed class action under the Employee Retirement Income Security Act of 1974 (ERISA), 29 U.S.C. § 1132(a)(2), against Defendants Prevea Clinic, Inc., the Board of Directors of Prevea Clinic, Inc., and John Does 1–30. Pending before this Court is Defendants' Rule 12(b)(6) motion to dismiss for failure to state a claim. After the parties filed their briefs, the United States Supreme Court granted certiorari in *Divane v. Northwestern University*, 935 F.3d 980 (7th Cir. 2020), *sub nom*. *Hughes v. Northwestern University*, No. 19-1401, 2021 WL 2742780 (S. Ct. July 2, 2021), a case upon which Defendants' motion to dismiss is largely based. The case is set for argument on December 6, 2021.

Divane/Hughes represents a split in the circuits. Because the Supreme Court's decision will likely clarify the pleading requirements for ERISA breach of fiduciary claims in cases such as this, the Court concludes that in the interest of judicial economy the case should be stayed

pending the Supreme Court's decision. Awaiting clarification by the Supreme Court will not only save judicial resources but will also likely preserve the parties' resources by allowing them to avoid unnecessary discovery or appeal, depending on the Supreme Court's decision. A stay in this case therefore appears appropriate. Accordingly, the Court, *sua sponte*, **STAYS** this case until further order of the Court. The Clerk is directed to administratively close the case.

SO ORDERED at Green Bay, Wisconsin this 30th day of September, 2021.

s/ William C. Griesbach
William C. Griesbach
United States District Judge

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